

AMENDED IN SENATE AUGUST 12, 2002

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN ASSEMBLY MAY 16, 2002

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2747

**Introduced by Assembly Members Wesson, Cohn, Goldberg, and
Frommer**

**(Coauthors: Assembly Members Alquist, Koretz, Nakano,
Negrete McLeod, and Pavley)**

February 22, 2002

An act to add and repeal Sections ~~6902.5, 17053.35, 17053.35~~ and 23635 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2747, as amended, Wesson. Tax: credits: qualified motion picture.

The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for taxable years beginning on or after July 1, 2004, and before ~~January 1, 2010~~ *an unspecified date*, in an amount equal to 15% of the amount paid or incurred, on or after January 1, 2004, for qualified wages, up to a

specified amount, with respect to the production of each qualified motion picture, as defined.

~~This bill would allow a taxpayer, in lieu of electing the credit for the production of a qualified motion picture against the personal income or corporation tax, to file a claim for a refund of sales or use taxes paid or a credit against liability for sale and use taxes due, equal to the personal income or corporation tax credit.~~

This bill would require the Technology, Trade, and Commerce Agency to report to the Legislature on the effectiveness of the tax credits authorized by this bill, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6902.5 is added to the Revenue and~~
2 ~~Taxation Code, to read:~~
3 ~~6902.5. (a) (1) In lieu of claiming the credit allowed by~~
4 ~~Section 17053.35 or 23635, a retailer may claim either a refund of~~
5 ~~sales or use taxes paid, or a credit against liability for sales or use~~
6 ~~taxes due, that is equal to the credit amount or any portion thereof~~
7 ~~that would otherwise be allowed pursuant to those sections.~~
8 ~~(2) Any retailer who claims a refund or credit under this section~~
9 ~~shall make an irrevocable election to waive the equivalent amount~~
10 ~~of credit allowed under Section 17053.35 or 23635. Any refund or~~
11 ~~credit claimed under this section shall be in lieu of claiming any~~
12 ~~credit under Section 17053.35 or 23635. Any retailer electing to~~
13 ~~file a claim for refund pursuant to this section shall provide a copy~~
14 ~~of the personal income or corporation tax return on which the tax~~
15 ~~liability was assessed for which the in-lieu refund is being claimed~~
16 ~~under this section.~~
17 ~~(b) Notwithstanding Section 6961, the board may recover any~~
18 ~~refund or credit, or part thereof, that is erroneously made pursuant~~
19 ~~to this section. In recovering any erroneous refund or credit made~~
20 ~~pursuant to this section, the board, in its discretion, may issue a~~
21 ~~deficiency determination in accordance with Article 2~~
22 ~~(commencing with Section 6481) or Article 4 (commencing with~~
23 ~~Section 6536) of Chapter 5. Except in the case of fraud, that~~
24 ~~determination shall be made within three years from the last day~~

1 of the month following the quarterly period in which the board
2 approved the refund.

3 ~~(e) The board shall provide an annual listing to the Franchise~~
4 ~~Tax Board, in a form and manner agreed upon by the board and the~~
5 ~~Franchise Tax Board, of the retailers who during the year have~~
6 ~~claimed a refund or credit of sales or use tax under this section and~~
7 ~~the amount of the refund or credit allowed to each retailer.~~

8 ~~(d) Any refund approved by the board pursuant to this section~~
9 ~~shall, upon an appropriation by the Legislature, be payable from~~
10 ~~the General Fund.~~

11 ~~(e) This section shall remain in effect only until December 31,~~
12 ~~2010, and as of that date is repealed.~~

13 **SEC. 2.—**

14 **SECTION 1.** Section 17053.35 is added to the Revenue and
15 Taxation Code, to read:

16 17053.35. (a) (1) For taxable years beginning on or after
17 July 1, 2004, and before January 1, 2010 ____, there shall be
18 allowed to a qualified taxpayer as a credit against the “net tax,”
19 as defined in Section 17039, an amount equal to 15 percent of the
20 total amount paid or incurred by the qualified taxpayer for
21 qualified wages with respect to the production of each qualified
22 motion picture.

23 (2) For each qualified motion picture production, there shall be
24 no more than one taxpayer eligible for the credit.

25 (3) Except as otherwise provided in paragraph (4), any
26 otherwise qualified wages paid or incurred in any taxable year
27 prior to the taxable year in which production of the motion picture
28 is completed shall be treated, for purposes of this section only, as
29 if paid or incurred in the taxable year in which production of the
30 motion picture is completed and the credit with respect to those
31 qualified wages shall be allowed in that year.

32 (4) In the case of any qualified wages paid or incurred on or
33 after January 1, 2004, and prior to the commencement of the first
34 taxable year of the qualified taxpayer beginning on or after July 1,
35 2004, with respect to a qualified motion picture that is completed
36 prior to the commencement of the qualified taxpayer’s first taxable
37 year beginning on or after July 1, 2004, the credit allowed under
38 paragraph (1) shall be claimed by the qualified taxpayer on the
39 taxpayer’s return for the first taxable year beginning on or after
40 July 1, 2004.

(5) Notwithstanding anything to the contrary in this section, no credit shall be claimed under this section on any return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after July 1, 2004.

(b) The amount of qualified wages with respect to a qualified individual that may be taken into account under subdivision (a) for each qualified motion picture shall be limited to twenty-five thousand dollars (\$25,000) for each qualified individual. For the purposes of this subdivision, in the case of episodic television, to the extent that qualified wages are paid for a qualified individual on other than on a "per episode" basis, an appropriate amount of qualified wages shall be apportioned to each qualified motion picture on which the qualified individual renders service.

(c) For purposes of this section, the following definitions shall apply:

(1) "Ancillary product" means any article for sale to the public that contains a portion of or any element of the motion picture.

(2) "Clip use" means a use of any portion of the motion picture in another motion picture.

(3) "Delayed residual compensation" means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made at the time of production.

(4) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified taxpayer for any taxable year during the production period with respect to any of the following:

(i) Employer contributions under any stock bonus, pension, profit sharing, annuity, or similar plan.

(ii) Employer-provided coverage under any accident or health plan for employees.

(iii) The cost of life or disability insurance provided to employees.

(B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (12) shall not be taken into account under this paragraph.

(5) "Licensing" means any grant of rights to distribute the motion picture, in whole or in part.

(6) "New use" means any use of a motion picture in a medium other than the medium for which it was initially created.

(7) “Production period” means the period commencing with approval to proceed with the production project and ending with delivery of the completed qualified motion picture. In the event the qualified motion picture is not completed, the “production period” ends when all activity on the project ceases.

(8) “Qualified entity” means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.

(9) (A) “Qualified individual” means any individual who performs services during the production period in an activity related to the production of a qualified motion picture, within the meaning of paragraph (2) of subdivision (b) of Section 6010.6.

(B) “Qualified individual” shall not include ~~either~~ *any* of the following:

(i) Any individual described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.

(iii) *Any individual who receives more than \$_____ for services performed during the production period.*

(10) (A) “Qualified motion picture” has the same meaning as “qualified motion picture” in paragraph (3) of subdivision (b) of Section 6010.6, including, but not limited to, productions in digital format, provided that both of the following conditions are satisfied:

(i) The total wages paid or incurred for the production of the qualified motion picture, exclusive of payments excluded pursuant to subparagraph (B) of paragraph (12), is more than two hundred thousand dollars (\$200,000), but less than ten million dollars (\$10,000,000).

(ii) At least ~~50~~ 75 percent of the total wages paid or incurred for the production of a qualified motion picture on or after January 1, 2004, are qualified wages.

(B) For the purposes of clause (i) of subparagraph (A), the following additional rules shall apply:

(i) In computing the total wages paid or incurred for the production of a qualified motion picture, all amounts paid or incurred by all persons or entities that share in the costs of the qualified motion picture shall be aggregated.

1 (ii) In the case of an episodic television series, each episode
2 shall be treated as a separate qualified motion picture.

3 (iii) For each taxable year beginning in a calendar year after
4 2004, the limits shall be increased by an amount equal to the dollar
5 amount of the limitation multiplied by the cost-of-living
6 adjustment as computed pursuant to subdivision (h) of Section
7 17041. If any increase in the two hundred thousand dollar
8 (\$200,000) limitation is not a multiple of five thousand dollars
9 (\$5,000), the resulting adjustment amount shall be rounded to the
10 nearest multiple of five thousand dollars (\$5,000). If any increase
11 in the ten million dollar (\$10,000,000) limitation is not a multiple
12 of five hundred thousand dollars (\$500,000), the resulting
13 adjustment amount shall be rounded to the nearest multiple of five
14 hundred thousand dollars (\$500,000).

15 (C) For purposes of computing the limitations under this
16 paragraph, “wages” means all amounts described in subparagraph
17 (A) of paragraph (12), whether these amounts are paid for services
18 performed or rendered within or without this state.

19 (11) “Qualified taxpayer” means a taxpayer who is either of
20 the following:

21 (A) The copyright owner of the qualified motion picture on the
22 date the qualified motion picture is first available to be exhibited
23 or broadcast to its general audience.

24 (B) An entity, designated by the copyright owner specified in
25 subparagraph (A), with exploitation rights on the date the qualified
26 motion picture is first available to be exhibited or broadcast to its
27 general audience.

28 In the event the qualified motion picture is not completed, the
29 copyright owner in subparagraph (A) and the designated entity in
30 subparagraph (B) shall be determined at the end of the production
31 period as defined in paragraph (7).

32 (12) (A) “Qualified wages” means all of the following:

33 (i) Any wages required to be reported under Section 13050 of
34 the Unemployment Insurance Code that were paid or incurred by
35 a qualified taxpayer with respect to a qualified individual for
36 services performed within this state on or after January 1, 2004.

37 (ii) The portion of any employee fringe benefits paid or
38 incurred by the qualified taxpayer properly allocable to qualified
39 wage amounts described in clause (i).

1 (iii) Any payments made to a qualified entity for services
2 performed in this state on or after January 1, 2004, by qualified
3 individuals (within the meaning of paragraph (9)).

4 (iv) Remuneration paid on or after January 1, 2004, to an
5 independent contractor who is a qualified individual for services
6 performed within this state by that qualified individual.

7 (B) “Qualified wages” does not include any of the following:

8 (i) Wages for legal or accounting services, except for legal or
9 accounting services performed by production employees.

10 (ii) Wages related to new use, reuse, clip use, licensing,
11 secondary markets, or delayed residual compensation, or the
12 creation of any ancillary product, including, but not limited to, a
13 soundtrack album, toy, or game.

14 (iii) Wages paid or incurred with respect to acquisition,
15 development, turnaround, or any rights thereto.

16 (iv) Wages related to marketing, promotion, or distribution of
17 a qualified motion picture.

18 (13) “Reuse” means any use of a qualified motion picture in
19 the same medium for which it was created, following the initial use
20 in that medium.

21 (14) “Secondary markets” means media in which a motion
22 picture is exhibited following the initial media in which it is
23 exhibited.

24 (d) If a qualified taxpayer claims a credit pursuant to this
25 section for any qualified wages paid or incurred with respect to a
26 particular qualified individual, no other credit shall be allowed
27 under this part to the qualified taxpayer with respect to the same
28 wage payments paid or incurred with respect to that qualified
29 individual for the same taxable period or periods.

30 (e) In the case where the credit allowed by this section exceeds
31 the “net tax,” the excess may be carried over to reduce the “net
32 tax” in the following year, and succeeding seven years if
33 necessary, until the credit is exhausted.

34 (f) Any deduction claimed by a qualified taxpayer for amounts
35 paid or incurred by the qualified taxpayer for qualified wages with
36 respect to the production of each qualified motion picture shall be
37 reduced in an amount equal to the amount of the credit claimed or
38 assigned pursuant to this section.

39 (g) No credit pursuant to this section shall be allowed unless the
40 qualified taxpayer or the assignee substantiates by adequate

1 records or by sufficient evidence corroborating his or her own
2 statement that the qualified wages on which the credit was
3 calculated were actually paid or incurred in the amount claimed.

4 (h) This section shall remain in effect only until December 1,
5 2010 ____, and as of that date is repealed.

6 ~~SEC. 3.~~—

7 SEC. 2. Section 23635 is added to the Revenue and Taxation
8 Code, to read:

9 23635. (a) (1) For taxable years beginning on or after July 1,
10 2004, and before January 1, 2010 ____, there shall be allowed to
11 a qualified taxpayer as a credit against the “tax,” as defined in
12 Section 23036, an amount equal to 15 percent of the total amount
13 paid or incurred by the qualified taxpayer for qualified wages with
14 respect to the production of each qualified motion picture.

15 (2) For each qualified motion picture production, there shall be
16 no more than one taxpayer eligible for the credit.

17 (3) Except as otherwise provided in paragraph (4), any
18 otherwise qualified wages paid or incurred in any taxable year
19 prior to that taxable year in which production of the motion picture
20 is completed shall be treated, for purposes of this section only, as
21 if paid or incurred in the taxable year in which production of the
22 motion picture is completed and the credit with respect to those
23 qualified wages shall be allowed in that year.

24 (4) In the case of any qualified wages paid or incurred on or
25 after January 1, 2004, and prior to the commencement of the first
26 taxable year of the qualified taxpayer beginning on or after July 1,
27 2004, with respect to a qualified motion picture that is completed
28 prior to the commencement of the qualified taxpayer’s first taxable
29 year beginning on or after July 1, 2004, the credit provided under
30 paragraph (1) shall be claimed by the qualified taxpayer on the
31 taxpayer’s return for the first taxable year beginning on or after
32 July 1, 2004.

33 (5) Notwithstanding anything to the contrary in this section, no
34 credit shall be claimed under this section on any return filed for any
35 taxable year commencing prior to the qualified taxpayer’s first
36 taxable year beginning on or after July 1, 2004.

37 (b) The amount of qualified wages with respect to a qualified
38 individual that may be taken into account under subdivision (a) for
39 each qualified motion picture shall be limited to twenty-five
40 thousand dollars (\$25,000) for each qualified individual. For the

1 purposes of this subdivision, in the case of episodic television, to
2 the extent that qualified wages are paid for a qualified individual
3 on other than on a “per episode” basis, an appropriate amount of
4 qualified wages shall be apportioned to each qualified motion
5 picture on which the qualified individual renders service.

6 (c) For purposes of this section, the following definitions shall
7 apply:

8 (1) “Ancillary product” means any article for sale to the public
9 that contains a portion of or any element of the motion picture.

10 (2) “Clip use” means a use of any portion of the motion picture
11 in another motion picture.

12 (3) “Delayed residual compensation” means supplemental
13 compensation paid at the time that a motion picture is exhibited
14 through new use, reuse, clip use, or in secondary markets, as
15 distinguished from payments made at the time of production.

16 (4) (A) “Employee fringe benefits” means the amount
17 allowable as a deduction under this part to the qualified taxpayer
18 for any taxable year during the production period with respect to
19 any of the following:

20 (i) Employer contributions under any stock bonus, pension,
21 profit sharing, annuity, or similar plan.

22 (ii) Employer-provided coverage under any accident or health
23 plan for employees.

24 (iii) The cost of life or disability insurance provided to
25 employees.

26 (B) Any amount treated as wages under clause (i) of
27 subparagraph (A) of paragraph (12) shall not be taken into account
28 under this paragraph.

29 (5) “Licensing” means any grant of rights to distribute the
30 motion picture, in whole or in part.

31 (6) “New use” means any use of a motion picture in a medium
32 other than the medium for which it was initially created.

33 (7) “Production period” means the period commencing with
34 approval to proceed with the production project and ending with
35 delivery of the completed qualified motion picture. In the event the
36 qualified motion picture is not completed, the “production
37 period” ends when all activity on the project ceases.

38 (8) “Qualified entity” means a personal service corporation as
39 defined in Section 269A(b)(1) of the Internal Revenue Code, a

1 payroll services corporation, or any entity receiving qualified
2 wages with respect to services performed by a qualified individual.

3 (9) (A) “Qualified individual” means any individual who
4 performs services during the production period in an activity
5 related to the production of a qualified motion picture, within the
6 meaning of paragraph (2) of subdivision (b) of Section 6010.6.

7 (B) “Qualified individual” shall not include ~~either~~ any of the
8 following:

9 (i) Any individual described in subparagraph (A), (B), or (C)
10 of Section 51(i)(1) of the Internal Revenue Code.

11 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
12 the Internal Revenue Code, of the qualified taxpayer.

13 (iii) *Any individual who receives more than \$_____ for services*
14 *performed during the production period.*

15 (10) (A) “Qualified motion picture” has the same meaning as
16 “qualified motion picture” in paragraph (3) of subdivision (b) of
17 Section 6010.6, including, but not limited to, productions in digital
18 format, provided that both of the following conditions are
19 satisfied:

20 (i) The total wages paid or incurred for the production of the
21 qualified motion picture, exclusive of payments excluded
22 pursuant to subparagraph (B) of paragraph (12), is more than two
23 hundred thousand dollars (\$200,000), but less than ten million
24 dollars (\$10,000,000).

25 (ii) At least ~~50~~ 75 percent of the total wages paid or incurred for
26 the production of the qualified motion picture on or after January
27 1, 2004, are qualified wages.

28 (B) For the purposes of clause (i) of subparagraph (A) the
29 following additional rules shall apply:

30 (i) In computing the total wages paid or incurred for the
31 production of a qualified motion picture, all amounts paid or
32 incurred by all persons or entities that share in the costs of the
33 qualified motion picture shall be aggregated.

34 (ii) In the case of an episodic television series, each episode
35 shall be treated as a separate qualified motion picture.

36 (iii) For each taxable year beginning in a calendar year after
37 2004, the limits shall be increased by an amount equal to the dollar
38 amount of the limitation multiplied by the cost-of-living
39 adjustment as computed pursuant to subdivision (h) of Section
40 17041. If any increase in the two hundred thousand dollar

(1) (\$200,000) limitation is not a multiple of five thousand dollars (\$5,000), the resulting adjustment amount shall be rounded to the nearest multiple of five thousand dollars (\$5,000). If any increase in the ten million dollar (\$10,000,000) limitation is not a multiple of five hundred thousand dollars (\$500,000), the resulting adjustment amount shall be rounded to the nearest multiple of five hundred thousand dollars (\$500,000).

(C) For purposes of computing the limitations under this paragraph, “wages” means all amounts described in subparagraph (A) of paragraph (12), whether these amounts are paid or services performed or rendered within or without this state.

(11) “Qualified taxpayer” means a taxpayer who is either of the following:

(A) The copyright owner of the qualified motion picture on the date the qualified motion picture is first available to be exhibited or broadcast to its general audience.

(B) An entity, designated by the copyright owner specified in subparagraph (A), with exploitation rights on the date the qualified motion picture is first available to be exhibited or broadcast to its general audience.

In the event the qualified motion picture is not completed, the copyright owner in subparagraph (A) and the designated entity in subparagraph (B) shall be determined at the end of the production period as defined in paragraph (7).

(12) (A) “Qualified wages” means all of the following:

(i) Any wages required to be reported under Section 13050 of the Unemployment Insurance Code that were paid or incurred by a qualified taxpayer with respect to a qualified individual for services performed within this state on or after January 1, 2004.

(ii) The portion of any employee fringe benefits paid or incurred by the qualified taxpayer properly allocable to qualified wage amounts described in clause (i).

(iii) Any payments made to a qualified entity for services performed in this state on or after January 1, 2004, by qualified individuals (within the meaning of paragraph (9)).

(iv) Remuneration paid on or after January 1, 2004, to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

(B) “Qualified wages” does not include any of the following:

1 (i) Wages for legal or accounting services, except for legal or
2 accounting services performed by production employees.

3 (ii) Wages related to new use, reuse, clip use, licensing,
4 secondary markets, or delayed residual compensation, or the
5 creation of any ancillary product, including, but not limited to, a
6 soundtrack album, toy, or game.

7 (iii) Wages paid or incurred with respect to acquisition,
8 development, turnaround, or any rights thereto.

9 (iv) Wages related to marketing, promotion, or distribution of
10 a qualified motion picture.

11 (13) “Reuse” means any use of a qualified motion picture in
12 the same medium for which it was created, following the initial use
13 in that medium.

14 (14) “Secondary markets” means media in which a motion
15 picture is exhibited following the initial media in which it is
16 exhibited.

17 (d) If the qualified taxpayer claims a credit pursuant to this
18 section for qualified wages paid or incurred with respect to a
19 particular qualified individual, no other credit shall be allowed
20 under this part to the qualified taxpayer with respect to the same
21 wage payments paid or incurred with respect to that qualified
22 individual for the same taxable period or periods.

23 (e) (1) Subject to the requirements of this subdivision, a
24 qualified taxpayer may elect to assign all, or any portion, of the
25 eligible amount (as defined in subparagraph (A) of paragraph (2))
26 to one or more taxpayers within the same controlled group.

27 (2) (A) For purposes of this subdivision, for any taxable year
28 of the qualified taxpayer the “eligible amount” shall mean the
29 total amount of any credits allowed under this section to the
30 qualified taxpayer, including any credit carryovers representing
31 credits allowed during the preceding two taxable years, reduced by
32 the amount of any allowed credits, including credit carryovers,
33 that have been claimed by the qualified taxpayer against the “tax”
34 for any taxable year.

35 (B) Immediately following any assignment under this
36 subdivision, the qualified taxpayer shall reduce the eligible
37 amount by the amount of any credit or credit carryover, as the case
38 may be and as specifically identified in the assignment agreement,
39 that is properly assigned under this subdivision.

1 (3) (A) For purposes of this subdivision, “controlled group”
2 means all entities that are under common control. Control, as used
3 in this subparagraph, is the ability of any person, as a corporate
4 parent or other entity, to direct the policies or actions of another
5 entity through stock or other ownership.

6 (B) The determination of whether a taxpayer is a member of the
7 controlled group that includes the qualified taxpayer shall be made
8 as of the day the assignment of the credit is made.

9 (4) The election provided in paragraph (1) shall only be valid
10 if it satisfies each of the following conditions:

11 (A) The election shall be made on the qualified taxpayer’s
12 timely filed original return for the taxable year in which the
13 assignment is made, or on an information return specified by the
14 Franchise Tax Board, filed no more often than quarterly
15 commencing on July 1, 2004, and to which the written agreement
16 specified in subparagraph (D) is attached.

17 (B) The election shall be irrevocable once made.

18 (C) The election shall identify the assignee to whom any credit
19 was assigned, and shall also contain the assignee’s California
20 taxpayer identification number.

21 (D) The assignment shall be made pursuant to a written
22 agreement, a copy of which shall be made available to the
23 Franchise Tax Board upon request, between the assignor and the
24 assignee that contains at least all of the following provisions:

25 (i) The agreement shall, with sufficient specificity, identify the
26 credit amount being assigned by the assignor to the assignee, as
27 well as the taxable year in which the allowed credit was originally
28 allowed to the assignor.

29 (ii) The agreement shall contain a provision specifying that the
30 assignor and assignee agree that they shall be jointly and severally
31 liable with respect to the assigned credit amount.

32 (iii) The agreement shall contain a provision specifying that
33 both the assignor and assignee agree that the Franchise Tax Board
34 shall be permitted to disclose to the assignor or assignee, as the
35 case may be, any otherwise confidential tax information relating
36 to the other party, except that this disclosure shall be limited to that
37 tax information necessary for either party to defend any proposed
38 adjustment or denial of a claim for refund with respect to the credit
39 assigned under this subdivision.

(5) Notwithstanding anything to the contrary in Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or this part, the Franchise Tax Board shall be entitled to collect any taxes attributable to the adjustment of any credit assigned under this subdivision from either the assignor or the assignee, or both, without limitation.

(6) The assignee may first claim the assigned credit amount on the assignee's return for the assignee's first taxable year ending after the date on which the assignment is made, but in no event will the assignee be entitled to claim the assigned credit in any earlier taxable year. If the assigned credit amount exceeds the assignee's "tax" for that taxable year, the excess may be carried over as provided in subdivision (f), to the extent of the assignor's original carry forward period.

(7) If the Franchise Tax Board determines that the amount of any credit claimed by a taxpayer (whether a qualified taxpayer or an assignee) on an original or amended return is more than the amount of credit allowed under this section, it shall mail a notice of proposed deficiency assessment (based on a credit adjustment) to the taxpayer. A proposed deficiency assessment (based on a credit adjustment) shall become final under the provisions of Part 10.2 (commencing with Section 18401) with respect to the amount of the credit for that taxpayer and any assignee or assignor.

(8) The Franchise Tax Board may prescribe, by forms and instructions, any additional information to be contained in the election permitted under this subdivision.

(9) Assignment of a tax credit by the qualified taxpayer for consideration shall be treated as a reduction of tax attributes of the qualified taxpayer and the assignee.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(g) Any deduction claimed by a qualified taxpayer for amounts paid or incurred by the qualified taxpayer for qualified wages with respect to the production of each qualified motion picture shall be reduced in an amount equal to the amount of the credit claimed or assigned pursuant to this section.

(h) No credit pursuant to this section shall be allowed unless the qualified taxpayer or the assignee substantiates by adequate

1 records or by sufficient evidence corroborating his or her own
2 statement that the qualified wages on which the credit was
3 calculated were actually paid or incurred in the amount claimed.

4 (i) This section shall remain in effect only until December 1,
5 2010 ____, and as of that date is repealed.

6 ~~SEC. 4.—~~

7 *SEC. 3.* (a) On or before December 31, 2007 ____, and on or
8 before December 31, 2009 ____, the Technology, Trade, and
9 Commerce Agency shall report to the Legislature on the
10 effectiveness of the incentives created by this act. In preparing the
11 report, the agency shall consider, but is not limited to considering,
12 all of the following:

13 (1) The number and increase or decrease of qualified motion
14 pictures produced in California.

15 (2) The amount of total qualified wages paid or incurred in
16 California.

17 (3) The level of employment in the production industry in
18 California.

19 (b) The agency may consult with the Employment
20 Development Department, the Franchise Tax Board, the State
21 Board of Equalization, representatives of industry and labor
22 organizations, and agencies of local government before
23 completing its report.

24 ~~SEC. 5.—~~

25 *SEC. 4.* The provisions of this act are severable. If any
26 provision of this act or its application is held invalid, that invalidity
27 shall not affect other provisions or applications that can be given
28 effect without the invalid provision or application.

29 ~~SEC. 6.—~~

30 *SEC. 5.* This act provides for a tax levy within the meaning
31 of Article IV of the Constitution and shall go into immediate
32 effect.